

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JASON ELLENWOOD,

Plaintiff,

V.

M.D. DAVE KENNEY, *et al.*

No. 08-5197FDB/JRC

## ORDER TO SHOW CAUSE

## Defendants.

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4.

Plaintiff was given until March 20, 2009, to provide service copies and service documents. He did not comply with the Court's March 2, 2009, Order (Dkt # 16).

For over a year the Court has worked to obtain a servable complaint from plaintiff. This action was filed on March 31, 2008 (Dkt # 1). The proposed complaint was a fifty page document that included a long narrative section in which plaintiff alleges he was accidentally shot in the face at age fifteen. Plaintiff alleges he suffers from mental illness as a result of disfigurement to his face. In the original complaint he describes in detail symptoms of

**ORDER TO SHOW CAUSE- 1**

1 depression, including auditory and visual hallucinations which he allegedly experiences (Dkt. #  
2 8).

3 Plaintiff claims he is entitled to reconstructive surgery, not for medical reasons, but for  
4 his mental health. He contends a prison medical review committee violated his constitutional  
5 rights when it denied his request for reconstructive surgery. The original complaint was filed  
6 June 5, 2008, after plaintiff cured defects in his application to proceed *in forma pauperis* (Dkt. #  
7 8).

8 On June 5, 2008, the Court ordered plaintiff to amend the complaint as the original  
9 complaint named only sub-agencies of the Department of Corrections. The Court also noted the  
10 complaint violated Fed. R. Civ. P. 8 (a) as it was a narrative and not a short plain statement of the  
11 claim.

12 The Court received a timely first amended complaint naming John and Jane Doe medical  
13 personnel who were on the committee that denied plaintiff's request (Dkt # 10). The Court  
14 ordered service, even though the defendants were not specifically identified by name (Dkt. # 11).  
15 On July 30, 2008, the Washington State Attorney General's Office entered a limited notice of  
16 appearance reserving objections regarding sufficiency of service; no person accepted this attempt  
17 at service by mail.

18 Four months later, on December 1, 2008, the Court entered an Order to Show Cause as  
19 plaintiff had taken no steps to serve any party by name and the case was not being prosecuted  
20 (Dkt # 14). Plaintiff filed documents with the Court indicating he was attempting to obtain the  
21 names of the persons on the committee that denied his request. Plaintiff indicated that he had  
22 finally obtained those names (Dkt. # 15, 17, and 18). On January 6, 2009, the Court ordered  
23 plaintiff to file an amended complaint that named a proper party (Dkt # 16). Plaintiff complied  
24

25  
26 ORDER TO SHOW CAUSE- 2

1 with the Court's order and on February 20, 2009, he filed an amended complaint naming ten  
2 persons he alleges denied his request for reconstructive surgery (Dkt # 21).

3 Plaintiff provided no service copies and no filled out service forms. On March 2, 2009,  
4 nearly one year after this action was originally filed; the Court entered an order directing plaintiff  
5 to provide service documents (Dkt. # 22). Plaintiff is no longer incarcerated and he is not relying  
6 on prison officials to make copies for him. The Court gave plaintiff two weeks to make copies  
7 and provide them to the Court.

8 It appears this action is languishing as a result of plaintiff's failure to prosecute and  
9 failure to follow a court order. Fed. R. Civ. P. 41 (b) and Local Civil Rule 41 (b) allow a court to  
10 dismiss an action for failure to comply with court orders. Local Rule 41 provides in part “ [T]he  
11 plaintiff in any such action will be given an opportunity to show cause in writing , or at the  
12 court's election in open court, why the case should not be dismissed.”

13 The court now **ORDERS** plaintiff to **SHOW CAUSE** why this action should not be  
14 dismissed without prejudice for failure to prosecute and failure to follow a court order. A  
15 response is due on or before **May 1, 2009**.

16 The Clerk's Office is directed to remove the **March 20, 2009**, due date from the Court  
17 calendar and send plaintiff a copy of this order. Further, the **May 1, 2009**, due date for a  
18 response should be noted.

19  
20  
21 DATED this 2<sup>nd</sup> day of April, 2009.  
22  
23  
24  
25  
26



J. Richard Creatura  
United States Magistrate Judge